



MAY 19 2016

VIA EMAIL & FAX

Grand Chief Edward Erasmus
Tłıchǵo Government
P.O. Box 412
BEHCHOKÒ, NT X1A 2P7

Dear Grand Chief Erasmus:

Report of Environmental Assessment and Reasons for Decision for Dominion Diamond Ekati Corporation's Jay Project (MVEIRB file number EA1314-01)

As you are aware, on May 19, 2016, the Government of the Northwest Territories (GNWT) Minister of Lands, as the Minister with delegated authority under the *Mackenzie Valley Resource Management Act* (MVRMA) and on behalf of the other responsible ministers (RMs) adopted the Mackenzie Valley Environmental Impact Review Board's (MVEIRB or Review Board) recommendation that Dominion Diamond Ekati Corporation's (Dominion or the developer) proposed Jay Project (the Project) be approved subject to the implementation of the mitigation measures and developer's commitments in the Review Board's *Report of Environmental Assessment and Reasons for Decision* (the Report). The territorial responsible ministers with jurisdiction in relation to the Project are the Minister of Lands, the Minister of Environment and Natural Resources (ENR), and the Minister of Health and Social Services. The federal responsible ministers with jurisdiction in relation to the Project are the Minister of Transport and the Minister of Fisheries, Oceans and the Canadian Coast Guard as consolidated by the Minister of Indigenous and Northern Affairs.

The GNWT thanks the Tłıchǵo Government (TG) for its detailed response letter dated April 4, 2016 and active participation throughout the environmental assessment (EA) of the Project. This letter responds to the TG's letter to outline some of the considerations taken by GNWT RMs in reaching their decision with respect to the Review Board's recommendation. It is clear from TG's letter that much thought was given to the measures recommended by the Review Board in the Report and the views of the TG as to how the measures would prevent likely

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significant adverse impacts to the environment and therefore accommodate potential adverse impacts to TG's Treaty rights. In addition to GNWT's comments that follow in this letter, GNWT notes that the Government of Canada (GoC) will also be responding to the TG by way of a separate letter. Both the GNWT and the GoC have carefully considered the TG's comments and have given full and fair consideration to the views expressed. GNWT and GoC share the view that the concerns TG has raised with respect to potential adverse impacts on the TG's Treaty rights as a result of the Project have been meaningfully addressed through the EA process.

While the TG letter expressed support for accepting the Review Board's Report, GNWT notes modifications were suggested to eight measures. This letter responds in detail to the TG's concerns and suggestions. In this response there are instances where the GNWT is able to make a commitment with respect to the issues or concerns the TG has raised in its letter. There are also instances where the GNWT believes that changes to the wording of the existing measures in the Report are unnecessary, based on the existence of other forms of accommodation that address the underlying concern, or because the existing measure(s) allows for the TG's suggested course of action to take place. Finally, there are instances where the GNWT believes that changes to the language in the existing measures, or an alternative proposed course of action, is unreasonable or impractical.

Impacts to caribou: Measure 6-1

The TG suggests a modification to Measure 6-1 to more precisely address the spring migration of caribou near the Jay road. The GNWT notes that the Caribou Road Mitigation Plan (CRMP) requires the shutdown requested by the TG, under prescribed circumstances and for periods of time that are protective of caribou. There will be opportunities for the TG to comment and make recommendations on the CRMP as part of the approval process for the Plan.

As the TG will recall, wildlife road management protocols were proposed by Dominion as part of the updated Wildlife Effects Monitoring Program (WEMP) for the Project. During technical sessions in April 2015, the developer committed to provide a separate CRMP that would give further details on strategies to reduce the impacts to caribou from the Jay and Misery roads. Dominion provided a draft CRMP in May 2015 and hosted a workshop with parties to the EA later the same month. The developer then incorporated suggestions arising from the workshop into a second version of the CRMP and held another workshop (June 2015) to

discuss further comments and suggestions on the revised CRMP. Given that the suggested modification is not precluded from occurring with the measure written as is, the GNWT believes that the modification is unnecessary.

The GNWT is confident that Dominion will continue to meaningfully engage with Aboriginal parties to the Jay EA on the development of the CRMP. Confidence in the developer to continue actively engaging and responding to Aboriginal communities is based on past experience in the Jay EA and the April 25, 2016 letter from the developer to the GNWT and GoC confirming their ongoing commitment to engagement.

The TG also suggests modifying Measure 6-1 to include a timeline for the development of regulations under Section 95 of the *Wildlife Act*. The GNWT recognizes that the TG is a party to the process whereby the regulations are being developed, and notes that the process is proceeding pursuant to priorities as set by parties to the process. Finally, the WEMP and its approval by ENR are not limited by the lack of regulations. For these reasons, the GNWT believes that the suggested modification is unnecessary.

The TG further suggests modifying Measure 6-1 to ensure that the Traditional Knowledge (TK) Elders group is involved in the design of the action levels, and on information collection, monitoring design and action levels associated with the WEMP. Neither Measure 6-1 nor Measure 6-5 precludes the TK Elders group from participating in the public review of the WEMP. Modification to either of Measures 6-1 or 6-5 is unnecessary to ensure the TK Elders groups is involved in developing monitoring and mitigations included in the WEMP. Measure 6-5 is discussed further below.

Impacts to caribou: Measure 6-2(a)

The TG recommends that Measure 6-2(a) be modified to include a timeline for the development of regulations under Section 95 of the *Wildlife Act*. As stated above with respect to Measure 6-1, the GNWT believes this to be unnecessary and outside of the jurisdiction of the Review Board. For certainty, the GNWT has not committed to a timeline, nor stated an anticipated timeline, for the development of regulations under the *Wildlife Act*; the GNWT notes that it expects the Bathurst Range Plan to be complete by 2018.

Impacts to caribou: Measure 6-3

TG requests that Measure 6-3 be modified to include a timeframe for Dominion to submit and GNWT to approve an updated Air Quality Emissions Monitoring and Management Plan (AQEMMP). The measure already includes a timeframe. Measure 6-3 states: Dominion will finalize and implement the AQEMMP prior to construction. The GNWT believes a modification to the measure is therefore unnecessary.

Impacts to caribou: Measure 6-4

The TG recommended that the dustfall standards required in Measure 6-4 be developed “in consultation with the EA parties.” The GNWT is committed to looking at opportunities to include TK, research conducted at the Ekati mine and other industrial developments, and existing dustfall standards elsewhere in Canada, when developing the dustfall objective. However, given the timelines imposed by the measure, and the developer’s stated goal of construction in 2016, consultation with parties to the Jay EA on the interim dustfall objectives is not possible. Once the objective is set, it will be shared with interested parties.

Impacts to caribou: Measure 6-5

With respect to the TK Elders group, the TG raised concerns about: the independence of the TK Elders group; the narrow scope of the measure; and the lack of assurance that Dominion will give full consideration to the recommendations of the TK Elders group.

The GNWT was pleased to see the April 25, 2016 letter from Dominion and the commitment from Dominion to work with communities to address the concerns over the TK Elders group. In its letter, Dominion informed the GNWT and GoC that it will be working with communities to address concerns around the independence of the TK Elders group, the ability to access outside expertise, public reporting, and to consider better ways to incorporate TK into the construction and operation of the Project. A draft Terms of Reference for the TK Elders group has also been distributed for comment, and a workshop is being proposed for June 2016. This commitment addresses the main concerns identified by TG around the TK Elders group.

Further, GNWT is confident that the recommendations, advice and reports put forth by the TK Elders group will be given the appropriate consideration by Dominion. GNWT also notes that any advice provided to regulatory authorities

such as the Wek'èezhii Land and Water Board by the TK Elders group will be fully and fairly considered by the authorities during the regulatory process. Through the reporting requirements of Measure 13-3, 13-4, as well as Measure 6-5, outcomes of the implementation will be made publicly available, including information on whether advice provided by the group is being implemented. As a public watchdog and with responsibilities to Aboriginal parties to the Ekati Environmental Agreement (Environmental Agreement), the Independent Environmental Monitoring Agency (IEMA), as directed by Measure 6-5, will receive the report from the TK Elders group. This will function as another mechanism to ensure that recommendations and advice provided by the TK Elders group is considered by the developer.

In its letter to GNWT, TG noted the scope of Measure 6-5 was limited and requested TK be incorporated into mine design, construction, operation, and closure. TG also indicated the collaborative research project should be more inclusive and include zone of influence monitoring, management responses, and impacts on caribou health. In the GNWT's view, Measure 6-5 does not preclude the incorporation of the additional responsibilities identified by the TG into the role of the TK Elders group. The GNWT does not believe that modification of the wording of Measure 6-5 is necessary to address the concerns of the TG.

Impacts to caribou: Measure 6-6

The TG states that Measure 6-6 "should require the assignment of funding and name the future Bathurst Caribou Herd Cooperative Advisory Committee." Measure 6-6 requires the timely completion of caribou management plans. In the GNWT's view, neither the naming of a Committee nor the assignment of funding would have an impact with respect to the accommodation of potential adverse impacts on the TG's Treaty rights as a result of the Jay Project.

Cultural Aspects and Traditional Knowledge

The TG recommended that MVEIRB's suggestion that Aboriginal groups each develop their own TK Protocol be changed to a measure that is binding on Aboriginal parties to the Jay EA. The GNWT notes that the MVRMA provides for MVEIRB to recommend mitigation measures only where the measure will prevent a likely significant adverse impact. MVEIRB did not identify a linkage between the development of TK Protocols by Aboriginal groups and a likely significant adverse impact. GNWT therefore believes that it would not be reasonable to change this suggestion to a measure. GNWT encourages all Aboriginal parties to consider MVEIRB's suggestion.

Impacts to air quality: Measure 9-1

The TG's letter recommends that Measure 9-1 be modified to include the timeframe of 2017 for the development of air quality regulations. The TG noted that during the Jay EA process the GNWT had committed to having air quality regulations in place in 2017; the GNWT reiterates this commitment. Modifying the measure to include this timeframe is therefore unnecessary.

Closing

For certainty, commitments made by the developer form part of the scope of the project as assessed by MVEIRB. RMs take the position that the Review Board's recommendation is subject to the implementation of the developer's commitments. The Project, as assessed and approved, therefore includes the implementation of all such commitments.

GNWT would like to take this opportunity to reiterate the importance of other measures and mechanisms in place to prevent likely significant adverse impacts to the environment and accommodate potential adverse impacts to Treaty rights of the TG. The Environmental Agreement is a legal instrument designed to ensure, among other things, signatories to the Agreement respect and protect land, water, wildlife and the land-based way of life essential to the well-being of Aboriginal Peoples. This obligation includes listening to community members' concerns, considering such concerns when making decisions about Ekati, and encouraging the developer to use TK in designing and implementing environmental plans and programs.

IEMA is established under the Environmental Agreement and is mandated to serve as a public watchdog of the developer and of regulatory processes related to Ekati, including participating in regulatory and other processes and making recommendations on various management plans and response frameworks. The Environmental Agreement requires Dominion to report annually on the results of its environmental monitoring programs, detailing monitoring, mitigation and adaptive management measures. Aboriginal Peoples, as defined in the Environmental Agreement, have the opportunity to review Dominion's reports and advise GNWT whether they consider the reports satisfactory. GNWT encourages the TG to continue its active involvement in IEMA's activities. GNWT is providing a copy of this letter to IEMA for its consideration in carrying out its responsibilities.

The views expressed by the TG in its letter are important and GNWT looks forward to continued TG participation in the regulatory phase of the Project. The GNWT emphasizes that consultation and accommodation with respect to Aboriginal and Treaty rights do not end with the responsible ministers' decision. The Project will now proceed to regulatory and other processes which will include opportunities for Aboriginal governments and organizations to offer input on authorizations and management plans and help ensure that potential adverse impacts to Aboriginal and Treaty rights, as necessary, are accommodated. The GNWT encourages the TG to participate in these processes and the developer's continuing engagement initiatives.

Thank you for taking the time to provide your views.

Sincerely,



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A/Assistant Deputy Minister
Planning and Coordination
Department of Lands

c. Laura Duncan, Tłıchǵ Executive Officer, Tłıchǵ Government

Shannon Cumming, Assistant Deputy Minister, Environment and Natural Resources

Derek Elkin, Assistant Deputy Minister, Health and Social Services

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David Burden, Regional Director General, Central and Arctic, Fisheries and Oceans Canada

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Mark Cliffe-Phillips, Executive Director, Mackenzie Valley Environmental
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